Supreme Court, U.S.
FILED
JUN 17 1992
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No. 91-1847

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

MAYNARD B. MILLER,

Petitioner,

vs.

ROBERT BRIGGS and GRACE BRIGGS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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Robert and Grace Briggs.

June 17, 1992

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I. FACTS

The pertinent facts of this case are fully and accurately set forth in the opinion of Circuit Judge T.G. Nelson. (Appended to Petition for Writ of Certiorari).

II. ARGUMENT

CIRCUIT COURT DECISIONS ARE NOT IN CONFLICT

The petitioner's primary argument for a Writ of Certiorari is founded on the mistaken belief that the decision in this case by the United States Court of Appeals for the Ninth Circuit conflicts with the holding in Cooper Grocery Co. v. Park, 218 Fed. 42 (5th Cir. 1914). No such conflict exists.

To determine whether a bankruptcy trustee achieves hypothetical bona fide purchaser status so as to avoid a prior security interest in the debtor's real

property, state law is applied. In re Washburn and Roberts, Inc., 795 F.2d 870 (9th Cir. 1986); In re Marino, 813 F.2d 1562 (9th Cir. 1987); and In re Probasco, 839 F.2d 1352 (9th Cir. 1988).

In Cooper, the Court looked to Texas law; whereas, in this case, Washington law was applied to determine the rights of the parties. Different conclusions were reached by the Courts because neither the facts nor the applicable state laws in Cooper are the same as in this case.

The Court in Cooper applied Texas State law to determine whether the trustee in a voluntary bankruptcy could avoid a deed of trust security interest in the debtor's property. The Court held that under the Texas statute an unrecorded deed of trust was invalid as

against a trustee who represented the general creditors. In this case, the United States Court of Appeals for the Ninth Circuit, as did the District Court, looked to Washington law to determine whether the trustee in an involuntary bankruptcy could avoid a deed of trust security interest held by the same people who petitioned to force the debtor into bankruptcy.

Under Washington law, constructive or inquiry notice of a deed of trust interest is sufficient to secure that interest against subsequent purchasers. Miebach v. Colasurdo, 102 Wn.2d 170, 685 P.2d 1074 (1984). Unlike the Texas statute in Cooper, recording is not required to validate a deed of trust in Washington. Miebach, Id.

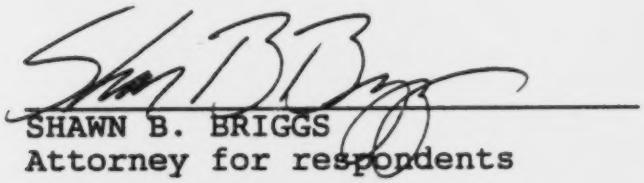
Given the specific, unique facts of this case and applying Washington law, the trustee was properly deemed to have had inquiry notice of the prior deed of trust. Therefore, under Washington law, the trustee did not achieve hypothetical bona fide purchaser status.

The considered opinion of the United States Court of Appeals for the Ninth Circuit, which affirmed the District Court's opinion, is entirely consistent with well-settled, existing law. The Court's decision in no way conflicts with any opinion of any other Circuit. Further, the unique factual circumstances of this case will give it little, if any, effect on future bankruptcy proceedings.

For the foregoing reasons, respondents Robert and Grace Briggs

respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted



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